

PBA/AES Proposed Erosion and Sediment Control (E&SC) Program Options for Lincoln

Option No. 1

- General Permit With Covenants
 - Developer maintains sole permit and responsibility
 - Regulates builders and small sites through covenants
 - Inspects development and small sites
 - Enforces compliance and performance
 - City enforces development permit only
 - Advantages and Disadvantages:
 - Single point of enforcement (developer)
 - Fewer City personnel and less expense
 - Less City control over small sites
 - Greater developer expense and control

A single development permit would reduce City administrative burdens and inspection labor; building site compliance would be through the Developer through his or her consultant (providing design, maintenance of common E&SC measures, and building site inspection). The City may develop standard covenant language with the Home Builders and Developers to help ensure consistency for builders across town and with various Developers. Developer willingness to enforce builder compliance and bear inspection and cleanup expense must be determined. City enforcement actions would be on developer. The Developer would have total control over the development site, minimizing problems on common areas. The City would require some additional staff to provide efficient and timely oversight, but less than for a small sites program (see Options 2 and 3, below). The City would retain an option to enforce against individual builders through the building permit.

Option No. 2

- General and Small Site Permits
 - Developer maintains common ESC measures
 - Developer transfers authority to builders
 - Builders obtain individual permit upon sale of lot(s)
 - State required documentation for E&SC permit transfer from developer
 - Mini-Stormwater Pollution Prevention Plan map indicating the placement of E&SC Best Management Practices (BMPs)
 - City to provide education program for proper placement and maintenance of BMPs
 - City enforces development *and* small site permits
 - Advantages and Disadvantages:
 - City tracks multiple sites (with or without subpermits)
 - City inspects developments and small sites
 - Multiple points of enforcement
 - Greater City expense and control
 - Builders responsible for own building sites

The Developer would maintain responsibility for general development conditions and would transfer control over individual building site owners upon sale or issuance of a building permit.

The City would develop a small sites program, including clerical support and additional inspectors to ensure adequate inspection and compliance. City would enforce small sites through options such as re-inspection fees, forfeiture of surety bonds, withholding building inspections, building permit suspension and revocation. This option is similar to the proposed NDEQ state program, but without to option to retain control or transfer responsibility to the builders. A lack of options would increase consistency and assist City and Developer planning and budgeting, but would reduce Developer flexibility. This option is similar to the proposed NDEQ state program

Option No. 3

The City is not limited to the two options presented, and welcomes proposals for options that will meet the regulatory and logistical objectives of both the construction community and the City for meeting the requirements of the U.S. EPA and the State of Nebraska.

What is Required?

Any Option MUST meet these six federal requirements for an E&SC program

1. Have an ordinance or other regulatory mechanism requiring the implementation of proper erosion and sediment controls, and controls for other wastes, on applicable construction sites;
2. Have procedures for site plan review of construction plans that consider potential water quality impacts;
3. Have procedures for site inspection and enforcement of control measures;
4. Have sanctions to ensure compliance (established in the ordinance or other regulatory mechanism);
5. Establish procedures for the receipt and consideration of information submitted by the public; and
6. Determine the appropriate best management practices (BMPs) and measurable goals for this minimum control measure.

1. Have an ordinance or other regulatory mechanism requiring the implementation of proper erosion and sediment controls, and controls for other wastes, on applicable construction sites;

We currently have 11 separate ordinances in various titles of the LMC that refer to various aspects of the E&SC program requirements. These ordinances mostly refer to sites that are 1 acre or larger.

The State of Nebraska has updated their Title 119 to include the text from the code of federal regulations which states that parcels that are “part of a larger common plan of development or sale” need to also be in compliance with the E&SC requirements. Currently the City of Lincoln is not requiring E&SC measures on individual small construction sites and thus we are out of compliance with our state permit requirements

What would you like to see in the ordinances that would make compliance straight forward?

2. Have procedures for site plan review of construction plans that consider potential water quality impacts;

Currently the City requires a Notice of Intent (NOI) permit for sites that disturb an area of ground one acre in size or greater. Under the language adopted by the state referring to “larger common plan of development or sale” individual construction sites under one acre may be required to submit a one or two page plan for compliance depending on the option of oversight selected by this Working Group.

What type of permit process would you like to see for a small sites program if that option is chosen?

What type of permit process would you like to see if small sites are managed by the developer?

3. Have procedures for site inspection and enforcement of control measures;

Currently the City conducts inspections randomly, after the utilities are installed, and on a complaint basis. E&SC measures are required to be inspected after every ½ inch rain or every 30 days. Records of these inspections and maintenance on the E&SC measures are required. No current inspection program exists for small sites.

What kind of inspection program would best help the owner of a large site to be compliant?

What kind of inspection program would best help the owner of a small site to be compliant?

4. Have sanctions to ensure compliance (established in the ordinance or other regulatory mechanism);

Currently the City had the option to issue a “Cease and Desist” order stopping any activity on a site until modifications are made to a site to bring it into compliance. Building and Safety also retains the right to withhold inspections for a site if it is determined that an owner is not willing to comply with a request to address E&SC issues. The City also retains the right to not allow utilities to be installed if E&SC issues are not resolved. Sanctions need to be equally enforced to establish a fair program.

What kind of sanctions would best help the owner of a large site to be compliant?

What kind of sanctions would best help the owner of a small site to be compliant?

5. Establish procedures for the receipt and consideration of information submitted by the public; and

Currently the City responds to all E&SC calls we receive. City staff maintains a database for the tracking of complaint issues. We also are required to receive input from the public on various stormwater quality programs.

Should there be improvements to the current system of responding to complaints regarding E&SC?

If so what improvements should be made?

6. Determine the appropriate best management practices (BMPs) and measurable goals for this minimum control measure.

Currently the City requires BMP's for all sites that disturb an area of ground one acre or greater in size. BMP's include methods of managing a site, installation and maintenance of E&SC measures, and level of compliance. Measurable goals include how well E&SC materials, maintenance, inspections and compliance are performing. Methods to track or measure BMPs include reliability of materials used, installation methods that do or don't work, the amount of education regarding E&SC that a owner has, and the number of complaints the City will receive.

What types of E&SC measures are working best for large and small sites?

What types of E&SC maintenance is needed for large and small sites?

What types of E&SC education is needed for large and small site operators?

What is the best way to achieve equitable E&SC compliance for large and small site operators?